

NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

IN RE NEW CENTURY

Case No. CV 07-00931 DDP (FMOx)  
(Lead Case)

**OFFICER AND DIRECTOR FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE**

1 This matter came before the Court for hearing pursuant to the Order  
2 Preliminarily Approving Settlements and Providing for Notice (“Preliminary  
3 Approval Order” or “Notice Order”), on the application of Lead Plaintiff New  
4 York State Teachers’ Retirement System (“Lead Class Plaintiff”) and Plaintiffs  
5 Carl Larson and Charles Hooten (collectively “Class Plaintiffs”) for approval of  
6 the settlement between the Class Plaintiffs, on behalf of the Class, and the Class  
7 Individual Defendants set forth in the Stipulation Of Global Settlement With New  
8 Century Officers And Directors (the “Global Officer And Director Stipulation” or  
9 “Global Officer And Director Settlement”). Full and adequate notice having been  
10 given to the Class as required in the Court’s Order, and the Court having  
11 considered all papers filed and proceedings held herein and otherwise being fully  
12 informed in the premises and good cause appearing therefor,

13 NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

14 1. This Judgment incorporates by reference the definitions in the Global  
15 Officer And Director Stipulation, and all capitalized terms used, but not defined  
16 herein, shall have the same meanings as in the Global Officer And Director  
17 Stipulation.

18 2. This Court has jurisdiction over the subject matter of the Consolidated  
19 Class Action and over all parties to the Consolidated Class Action, including all  
20 members of the Class.

21 3. The Court hereby affirms its certification in the Preliminary Approval  
22 Order pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil  
23 Procedure, of a Class defined as follows:

24 all persons and entities who purchased or otherwise acquired New  
25 Century common stock, New Century Series A Preferred Stock, New  
26 Century Series B Preferred Stock, and/or New Century call options  
27 and/or who sold New Century put options, during the time period  
28 from May 5, 2005, through and including March 13, 2007, either in  
the Offerings, pursuant to a registration statement, or in the market,  
and who, upon disclosure of certain facts alleged in the Complaint,  
were injured thereby. Excluded from the Class are (a) Class  
Defendants; (b) members of the immediate families of the Class  
Individual Defendants; (c) the subsidiaries and affiliates of Class

1 Defendants; (d) any person or entity who was a partner, executive  
2 officer, director or controlling person of New Century (including any  
3 of its subsidiaries or affiliates) or of any Class Defendant; (e) any  
4 entity in which any Class Defendant has a controlling interest; and (f)  
5 the legal representatives, heirs, successors and assigns of any such  
6 excluded party. Also excluded from the Class are any persons who  
7 exclude themselves by filing a request for exclusion in accordance  
8 with the requirements set forth in the Notice, as listed on Exhibit 1  
9 annexed hereto.

10 4. The Court also affirms its findings in the Preliminary Approval Order  
11 that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal  
12 Rules of Civil Procedure have been satisfied in that: (a) the number of Class  
13 Members is so numerous that joinder of all members thereof is impracticable; (b)  
14 there are questions of law and fact common to the Class; (c) the claims of Lead  
15 Class Plaintiff and Class Plaintiffs Carl Larson and Charles Hooten are typical of  
16 the claims of the Class they seek to represent; (d) Class Plaintiffs have fairly and  
17 adequately represented the interests of the Class; (e) the questions of law and fact  
18 common to the members of the Class predominate over any questions affecting  
19 only individual members of the Class; and (f) a class action is superior to other  
20 available methods for the fair and efficient adjudication of the controversy.

21 5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the  
22 Court affirms its certification of Class Plaintiffs as the Class representatives and  
23 Lead Counsel Bernstein Litowitz Berger & Grossmann LLP as the Class counsel.

24 6. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby  
25 approves the Global Officer And Director Settlement set forth in the Global  
26 Officer And Director Stipulation and finds that the Global Officer And Director  
27 Settlement is, in all respects, fair, reasonable, adequate and entered into in good  
28 faith within the meaning of California Code of Civil Procedure § 877. The Court  
further finds that the Global Officer And Director Settlement set forth in the  
Global Officer And Director Stipulation is the result of arm's-length negotiations  
between experienced counsel representing the interests of the Parties.

1 Accordingly, the Global Officer And Director Settlement embodied in the Global  
2 Officer And Director Stipulation is hereby finally approved in all respects. The  
3 Parties are hereby directed to perform its terms.

4 7. Pursuant to and in compliance with Rule 23 of the Federal Rules of  
5 Civil Procedure, the Court hereby finds that due and adequate notice of these  
6 proceedings was directed to all persons and entities who are Class Members,  
7 advising them of the Global Officer And Director Settlement, the Plan of  
8 Allocation, and Lead Counsel's intent to apply for attorneys' fees and  
9 reimbursement of Litigation Expenses associated with the Consolidated Class  
10 Action, and of their right to object thereto, and a full and fair opportunity was  
11 accorded to all persons and entities who are Class Members to be heard with  
12 respect to the foregoing matters. Thus, it is hereby determined that all Class  
13 Members who did not timely and properly elect to exclude themselves by written  
14 communication postmarked or otherwise delivered on or before the date set forth  
15 in the Notice and the Preliminary Approval Order, are bound by this Judgment.

16 8. The Consolidated Class Action and all claims contained therein are  
17 dismissed with prejudice as to the Class Individual Defendants.

18 9. The Parties are to bear their own costs, except as otherwise provided  
19 in the Global Officer And Director Stipulation.

20 10. Upon the Effective Date, the Settled Claims shall be discharged as  
21 against each and every Released Officer And Director and the Insurance Carriers,  
22 and Plaintiffs shall be deemed to forever be enjoined from prosecuting any or all  
23 of the Settled Claims against each and every Released Officer And Director and  
24 the Insurance Carriers.

25 11. Upon the Effective Date, the Settling Individuals' Claims as against  
26 Class Plaintiffs and all other Class Members, the Trust, the Trustee, Alan M.  
27 Jacobs individually, the Debtors, the Debtors' Estates, the Plan Advisory  
28 Committee, and Kodiak, and their respective heirs, predecessors, successors,

1 assigns, employees, agents and retained professionals (other than KPMG or the  
2 Underwriter Defendants) shall be released, waived, discharged and dismissed, and  
3 the Settling Individuals shall be deemed to forever be enjoined from prosecuting  
4 each and every of the Settling Individuals' Claims against Class Plaintiffs and all  
5 other Class Members, the Trust, the Trustee, Alan M. Jacobs individually, the  
6 Debtors, the Debtors' Estates, the Plan Advisory Committee, and Kodiak, and  
7 their respective heirs, predecessors, successors, assigns, employees, agents and  
8 retained professionals.

9 12. Upon the Effective Date, the Settling Individuals shall be deemed to  
10 have released, waived, discharged and dismissed each and every Settling  
11 Individuals' Claims against KPMG and the other Released Auditor Parties, and  
12 shall forever be enjoined from prosecuting each and every Settling Individuals'  
13 Claim against KPMG and the other Released Auditor Parties.

14 13. Upon the Effective Date, the Settling Individuals shall be deemed to  
15 have released, waived, discharged and dismissed each and every claim, and shall  
16 forever be enjoined from prosecuting any claim, against any and all of the  
17 Underwriter Defendants and the other Released Underwriter Parties whether  
18 arising under federal, state, common or foreign law, arising out of or based upon  
19 the allegations, transactions, facts, matters or occurrences, representations or  
20 omissions involved, set forth, or referred to in the Consolidated Class Action.

21 14. Upon the Effective Date, Kodiak shall be deemed to have released,  
22 waived, discharged and dismissed, and shall forever be enjoined from prosecuting  
23 each and every of the Settled Kodiak Claims as against KPMG and the other  
24 Released Auditor Parties.

25 15. Upon the Effective Date, this Final Judgment And Order Of  
26 Dismissal With Prejudice constitutes the final discharge of all obligations to the  
27 Plaintiffs of the Settling Individuals arising out of the Officer And Director  
28 Litigations. All future claims for contribution arising out of the Officer And

1 Director Litigations by any person or entity against the Settling Individuals or by  
2 any Settling Individual against any other person or entity, other than a person  
3 whose liability for the Claims asserted in the Director And Officer Litigations has  
4 been extinguished by the Settlement of those Claims by that Settling Individual,  
5 are barred pursuant to 15 U.S.C. § 78u-4(f)(7)(A).

6 16. The distribution of the Notice and the publication of the Summary  
7 Notice as provided for in the Preliminary Approval Order constituted the best  
8 notice practicable under the circumstances, including individual notice to all  
9 members of the Class who could be identified through reasonable effort. Said  
10 notice provided the best notice practicable under the circumstances of those  
11 proceedings and of the matters set forth therein, including the proposed Global  
12 Officer And Director Settlement set forth in the Global Officer And Director  
13 Stipulation, to all persons entitled to such notice, and said notice fully satisfied the  
14 requirements of Federal Rule of Civil Procedure 23, the Private Securities  
15 Litigation Reform Act of 1995, due process, and any other applicable law.

16 17. The Court hereby finds and concludes that the formula for the  
17 calculation of the claims which is set forth in the Plan of Allocation proposed by  
18 Lead Class Plaintiff provides a fair and equitable basis upon which to allocate the  
19 proceeds of the Settlements<sup>1</sup> among the Class Members with due consideration  
20 having been given to administrative convenience and necessity.

21 18. The Court hereby finds and concludes that the Plan of Allocation  
22 proposed by Lead Class Plaintiff is, in all respects, fair and equitable to the Class.

23 \_\_\_\_\_  
24 <sup>1</sup> “Settlements” herein includes the settlements as set forth in the Global Officer  
25 And Director Stipulation, the Stipulation of Settlement Between Plaintiffs and  
26 KPMG LLP (“KPMG Stipulation” or “KPMG Settlement”), and the Stipulation of  
27 Settlement Between Plaintiffs and the Underwriter Defendants (“Underwriter  
28 Settlement” or “Underwriter Stipulation”) (collectively “Settlements” or  
“Stipulations”). The Plan of Allocation sets forth a plan for allocating to Class  
Members the funds allocated to the Class from all three of the Settlements.

1 Accordingly, the Court hereby approves the Plan of Allocation proposed by Lead  
2 Class Plaintiff.

3 19. Any order entered regarding any attorneys' fees and any expense  
4 application shall in no way disturb or affect this Final Judgment and Order of  
5 Dismissal with Prejudice and shall be considered separate from this Final  
6 Judgment and Order of Dismissal with Prejudice.

7 20. The Global Officer And Director Stipulation and Global Officer And  
8 Director Settlement set forth therein, whether or not consummated, and any  
9 proceedings taken pursuant to it:

10 a. shall not be offered or received against any of the Released Officers  
11 And Directors as evidence of, or construed as, or deemed to be evidence of any  
12 presumption, concession, or admission by any of the Released Officers And  
13 Directors with respect to the truth of any fact alleged by Plaintiffs or the validity of  
14 any claim that was or could have been asserted against any of the Released  
15 Officers And Directors in the Officer And Director Litigations or in any litigation,  
16 or of any liability, negligence, fault, or other wrongdoing of any kind of any of the  
17 Released Officers And Directors;

18 b. shall not be offered or received against any of the Released Officers  
19 And Directors as evidence of a presumption, concession or admission of any fault,  
20 misrepresentation or omission with respect to any statement or written document  
21 approved or made by any of the Released Officers And Directors, or against the  
22 Plaintiffs or any Class Members as evidence of any infirmity in the claims of  
23 Plaintiffs or the other Class Members;

24 c. shall not be offered or received against any of the Released Officers  
25 And Directors, or against the Plaintiffs or any other Class Members, as evidence of  
26 a presumption, concession or admission with respect to any liability, negligence,  
27 fault or wrongdoing of any kind, or in any way referred to for any other reason as  
28 against any of the Released Officers And Directors, in any other civil, criminal or

1 administrative action or proceeding, other than such proceedings as may be  
2 necessary to effectuate the provisions of this Stipulation; provided, however, that if  
3 this Stipulation is approved by the Consolidated Class Action Court, the Settling  
4 Individuals, any other Released Officer And Director, or any Class Member may  
5 refer to it to effectuate the protection from liability granted them hereunder;

6 d. shall not be construed against any of the Released Officers And  
7 Directors, Plaintiffs or any other Class Members as an admission, concession, or  
8 presumption that the consideration to be given hereunder represents the amount  
9 which could be or would have been recovered after trial;

10 e. shall not be construed against Plaintiffs or any other Class Members  
11 as an admission, concession, or presumption that any of their claims are without  
12 merit or that damages recoverable under the Officer And Director Litigations  
13 would not have exceeded the Officer And Director Settlement Amount; and

14 f. shall not be construed as or received in evidence as an admission,  
15 concession or presumption that class certification is appropriate in this  
16 Consolidated Class Action, except for purposes of this Settlement.

17 21. The Global Officer And Director Stipulation may be filed in an action  
18 to enforce or interpret the terms of the Global Officer And Director Stipulation, the  
19 Global Officer And Director Settlement contained therein, and any other  
20 documents executed in connection with the performance of the agreements  
21 embodied therein. The Stipulation and/or this Final Judgment And Order Of  
22 Dismissal With Prejudice may be filed in any action in order to support a defense  
23 or counterclaim based on the principles of *res judicata*, collateral estoppel, full  
24 faith and credit, release, good faith settlement, judgment bar, or reduction or any  
25 other theory of claim preclusion or issue preclusion or similar defense or  
26 counterclaim.

27 22. Without affecting the finality of this Final Judgment And Order Of  
28 Dismissal With Prejudice in any way, this Court hereby retains continuing

1 jurisdiction over: (a) implementation of this Global Officer And Director  
2 Settlement and any award or distribution of the settlement fund, including interest  
3 earned thereon; (b) the allowance, disallowance or adjustment of any Class  
4 Member's claim on equitable grounds and any award or distribution of the  
5 settlement fund; (c) disposition of the settlement fund; (d) hearing and determining  
6 applications for attorneys' fees and Litigation Expenses in the Consolidated Class  
7 Action; (e) enforcing and administering this Judgment; (f) all parties hereto for the  
8 purpose of construing, enforcing and administering the Global Officer And  
9 Director Stipulation; and (g) other matters related or ancillary to the foregoing.

10 23. The Court finds that during the course of the Consolidated Class  
11 Action, the Parties and their respective counsel at all times complied with the  
12 requirements of Federal Rule of Civil Procedure 11.

13 24. In the event that the Global Officer And Director Settlement does not  
14 become effective in accordance with the terms of the Global Officer And Director  
15 Stipulation or the Effective Date does not occur, or in the event that the settlement  
16 fund, or any portion thereof, is returned to any person or entity contributing to the  
17 settlement fund, then this Final Judgment And Order Of Dismissal with Prejudice  
18 shall be rendered null and void to the extent provided by and in accordance with  
19 the Global Officer And Director Stipulation and shall be vacated and, in such  
20 event, all orders entered and releases delivered in connection herewith shall be null  
21 and void to the extent provided by and in accordance with the Global Officer And  
22 Director Stipulation.


23 25. Without further Order of the Court, the Parties may agree to  
24 reasonable extensions of time to carry out any of the provisions of the Global  
25 Officer And Director Stipulation.

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2 26. There is no just reason for delay in the entry of this Judgment and  
3 immediate entry by the Clerk of the Court is expressly directed.

4 IT IS SO ORDERED,

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6 DATED: November 15, 2010

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11 THE HONORABLE DEAN D. PREGERSON  
12 UNITED STATES DISTRICT JUDGE  
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